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Mark A Nordstrom
Counsel - Labor Law

General Electric Company
3135 Easton Turnpike, Fairfield, CT 06431
203 373-2394 Fax 203 373-2027
Dial Comm 8* 229-2394 Fax· 8* 229-2027
E-Mail mark nordstrom@corporate ge com

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General Services Administration
FAR Secretariat (MVR)
1800 F Street, NW, Room 4035
Wahington, DC 20405

ATTN: Laurie Duarte

Dear Ms. Duarte:

This letter is to express General Electric Company's opposition to the "Office of Federal Procurement Policy's Letter and Draft Regulations On Contractor Responsibility, Labor Costs, and Costs Relating to Legal and Other Proceedings", dated July 1, 1999. General Electric is opposed to any change in the Federal Acquisition Regulations ("FAR") which is aimed at deliberately altering the balance of power between employers and unions, a matter under the exclusive jurisdiction of the National Labor Relations Board. The Company is also opposed to any procurement regulations that would interfere with employees' Section 7 rights under the National Labor Relations Act to refrain from union activities, including the right not to join unions.

In keeping with these broad objections, General Electric finds particularly objectionable any change that would permit a contracting officer to withhold a contract award on the basis of complaints or allegations of labor or employment law violations. To the extent that any contractor's labor and employment record were to be reviewed in determining whether or not the contractor is "responsible", such record should be confined to claims or charges that have been fully adjudicated and be reasonably contemporaneous with the contract award. Consideration of labor and employment charges which have not been fully adjudicated could result in the contractor's denial of due process and is likely to entangle contracting officers in purely private matters between an employer and its union representatives.

The Supplementary Information which precedes the proposed amendment to Section 9.104-1 states that "normally" determinations of contractor responsibility are

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made based on violations of law or regulations that have resulted in a "final adjudication". The statement goes on to state, however, that contracting officers could, under some circumstances, arrive at determinations of a contractor's responsibility "upon persuasive evidence of substantial noncompliance with a law or regulation". This language suggests that "substantial evidence of noncompliance" could be gleaned from claims or charges of violations that have not been fully adjudicated. Any such authority would provide the contracting officer with the power to deprive contractors of property or prospective contractual advantage without due process. In addition, to the extent that the contracting officer were to rely on past labor and employment law violations which were not reasonably contemporaneous or which do not establish a deliberate pattern of violations, such reliance would not reasonably relate to the contractor's responsibility and would constitute a form of retroactive "double jeopardy".

These are not idle concerns. General Electric Company is a large private employer with over 160,000 employees in the United States. GE was among the top 15 government contractors in FY 1998. Most of GE's 12 separate businesses provide products and services under government contracts. You need only focus on one such business, GE Aircraft Engines ("GEAE"), however, to appreciate GE's substantial interest in the fairness of the federal government's procurement process. GEAE is the GE business with the largest volume of government contracts. GEAE is an operating division of GE, headquartered in Evendale, Ohio, which employs approximately 31,000 employees in over 55 major manufacturing plants and service shops located throughout the country. In 1998, GEAE was awarded federal contracts in excess of $1 Billion. While several major US unions represent employees at many GEAE worksites, GEAE employees at many other sites are not represented by a union.

The General Electric Company, like most large companies, at all times strives to observe applicable laws, including laws and regulations governing labor and employment practices. Given the complexity of labor and employment laws, however, any large company could be expected to experience an occasional labor or employment law violation. Such occasional violations, however, should not serve as evidence of "substantial noncompliance" with labor and employment laws.

The proposed FAR gives broad discretion to contracting officers -- who are trained acquisition professionals with little or no experience in labor and employment law - to bar contract awards on the basis of isolated or stale violations of labor and employment laws. Additionaly, contracts could be denied based merely on allegations of labor and employment law violations. Such an expansion in the role of contracting officers would not advance protection of the government's interest in the acquisition process. This is because isolated or stale violations do not make an

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employer "irresponsible" and there is no meaningful evidence that the mere filing of a charge or complaint is evidence of a violation of labor and employment laws. Large companies like GE receive numerous charges of labor and employment law violations which are found, in the vast majority of cases, to be groundless. The failure to provide explicit standards to contracting officers as to how isolated or stale violations or mere charges of labor and employment law violations are to be assessed when awarding government contracts denies contractors elementary due process and is fundamentally unfair.

For a company like GE, which employs a significant number of workers at both represented and non-represented worksites, permitting contract awards to be influenced by mere allegations of labor and employment law violations is particularly troubling in light of the increasing use of "corporate campaign" strategies by unions both to secure advantages at the bargaining table and to force employers into recognizing unions without the benefit of secret ballot elections. Although GE has not been subject to a union-sponsored corporate campaign which has included mass filing of charges alleging, for example, unfair labor practices, wage and hour violations or various forms of discrimination, such filings are widely used as weapons by unions in waging corporate campaigns. For example, in Chapter 13 of "A Troublemaker's Handbook", the author Dan La Botz observes:

> . . . private companies are subject to all sorts of laws and regulation, from The Securities and Exchange Commission to the Occupational Safety and Health Act, from the Civil Rights Act to the local fire codes. Every law or regulation is a potential net in which management can be snared and entangled. A complaint to a regulatory agency can cause the company managerial time, public embarrassment , potential fines and the costs of compliance. One well-placed phone call can do a lot of damage.

A Troublemaker's Handbook. How to Fight Back Where You Work – and Win (A Labor Notes Book, 1991), at 127. (Emphasis in the original).

GE has the good fortune of enjoying strong and respectful relationships with the many unions which represent GE workers. Generally, GE and its unions have successfully confined their discussions over contractual issues to the bargaining table and have mutually respected the rights of GE employees to either join or not join unions based on preferences expressed through secret ballot elections supervised by the National Labor Relations Board. Our concern with any proposal which would permit professional contracting officers to consider labor and employment law charges as evidence of substantial non-compliance is heightened by the fact that such a proposal is likely to present unions with a nearly irresistible means of utilizing government procurement processes to exert leverage against

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employers/contractors in the context of a corporate campaign. The AFL-CIO Industrial Union Department defines a corporate campaign as one which:

> applies pressure to many points of [corporate] vulnerability to convince the company to deal fairly and equitably with the union . . . It means vulnerabilities in all of the company's political and economic relationships – with other unions, shareholders, customers, creditors and government agencies – to achieve union goals.

Industrial Union Department, AFL-CIO, *Developing New Tactics: Winning with Corporate Campaigns* (1985), at 1.

Without impugning the motives of any union with which GE bargains, reference to the political and labor relations climate in 1997 illustrates how a union preparing for contract negotiations may view the procurement process as a means of pressuring an employer – especially a process that permits consideration of mere complaints and charges as evidence of non-compliance. Three months prior to our 1997 national negotiations, there was widespread publication of a letter written by Edward Fire, President of the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers (AFL-CIO), to Vice President Al Gore, which suggested that GE is the type of employer which warrants strict scrutiny in the procurement process based on its labor relations, employment practices and policies and support for the right to organize and strike. (Attachment A). This letter was prompted by the typical pre-negotiations comments made by union and Company officials that often accompanies preparation for union contract negotiations, not by any evidence that GE had violated any labor and employment laws or planned to violate any such laws. The tone of Mr. Fire's letter suggests that, were procurement regulations of the type now proposed then in effect, the union might well have been tempted to use such regulations to leverage an advantage at the bargaining table or apply pressure against GE in a corporate campaign.

As mentioned above, mass filings of discrimination charges and unfair labor practices are often used as a tactic to aid unions in either contract negotiations or in corporate campaigns. Faced with such mass filings, and assuming that FAR 9.104-1 were amended to permit contracting officers to consider mere charges as evidence of "substantial noncompliance with labor laws", it is entirely possible that the federal government would become entangled in private matters of employer-union contract negotiations. The proposed FAR will likely encourage such mass filings to be used by unions to exert leverage for their demands. Meanwhile, if a mass of labor and employment law charges or complaints were presented in such a way as to evoke the contracting officer's sympathies, a company like GE could be denied a contract award even though no final adjudication had determined that the company had

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violated any labor and employment law. Such a result would be a deprivation of the company's prospective contractual advantage without due process.

There is a long line of cases which articulate the requirements of due process. "For more than a century the central meaning of procedural due process has been clear: 'Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.'... It is equally fundamental that the right to notice and an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner.'" Fuentes v. Shevin, 407 U.S. 67, 80 (1972) (citations omitted) (holding that the prejudgment replevin laws of Pennsylvania and Florida violated the due process clause, since no hearing was afforded prior to the seizure of property.) The Fuentes court specifically recognized that fairness is rarely obtained "by secret, one-sided determination of facts decisive of rights". Id. at 81 (citation omitted.) Clearly, the proposed amendment to the FAR, which would determine economic rights based on unadjudicated charges and claims, violates due process requirements.

Similarly, in Sniadach v. Family Finance Corp., 395 U.S. 337 (1969), the Supreme Court held that a state prejudgment garnishment procedure whereby an individual's wages were frozen between the garnishment of wages and the culmination of suit, without the defendant having an opportunity to be heard, violated the due process clause of the 14th Amendment. Justice Harlan, in a concurring opinion, specifically stated that "due process is afforded only by the kinds of 'notice' and 'hearing' which are aimed at establishing the validity, or at least the probable validity, of the underlying claim against the alleged debtor before he can be deprived of his property or its unrestricted use." Id. at 342. The proposed amendment to the FAR would violate due process by permitting – perhaps even requiring - the deprivation of GE's prospective contractual advantages without first requiring the establishment of the validity of charges and claims against the Company.

Finally, any consideration of adjudicated charges should be confined to those which are reasonably contemporaneous with the contract award under consideration and which demonstrate a pattern of deliberate labor and employment law violations. To permit otherwise would impose additional unauthorized penalties for past violations which bear no reasonable relationship to whether the contractor is "responsible".

While General Electric Company takes issue with other aspects of the proposed FAR amendments which expands contracting officers' responsibilities to include areas of expertise beyond their formal training, such as evaluating contractors' labor and employment practices in making awards, we have confined

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our comments to only one of the most troubling aspects of the proposal. We trust that these remarks will be given thoughtful consideration.

Respectfully submitted,

Mark A. Nordstrom

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CBC Chair Edward Fire's Letter to
Vice President Al Gore on Clinton Administration Policy on
Government Contractors'
and Labor Relations

March 7, 1997

The Honorable Albert Gore Vice President of the United States
The White House
Washington, D.C. 20500

Dear Mr. Vice President:

On behalf of working men and women, I want to thank you for your strong words of solidarity February 18 at the AFL-CIO Executive Council
meeting. You have sent a message loud and clear that workers and their unions have a friend we can count on now and in the future.

I am writing to draw your attention to the 1997 expiration of the collective bargaining contract between General Electric and the 14 unions who
represent 46,000 highly productive workers. GE is an enormously successful enterprise and any analysis of that success will take note of the
high skills, quality work and high productivity of the union members at GE. For more than 50 years they have worked within the collective
bargaining structure to produce such high marks as GE's $7.28 billion in profits last year.

But now that 50-year relationship between management and workers is being threatened by the unnecessary recklessness of anti-union
remarks by GE Chief Executive Officer John F. Welch, Jr.

In language reminiscent of the 1930s, Welch made clear that the upcoming contract negotiations with our

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Coordinated Bargaining Committee
will depart from the company's 50-year tradition. We are particularly disturbed by the following remarks Welch made to GE management in
January in Florida:

"We don't need some third party to give people voice and dignity . . . We are the best prepared company in the world to take a strike. We'll
show the world how we can operate in a strike and not flinch if that's what happens."

Welch went on to chastise the big three auto companies who "accepted all those crazy demands that were non-competitive." He challenged
the management to "get prepared like you have never been prepared" and ordered monthly reports to him on preparations to operate during a
strike.

Welch's remarks have caused grave concern among trade unionists around the country. The AFL-CIO Executive Council condemned Welch's
threats and called on U.S. and world trade unions to "leave no task undone in mobilizing support for the GE workers." The 14 unions with
members at GE are equally united in our quest to see fruitful negotiations reach a fair settlement and, as the AFL-CIO said, "without a costly
and unnecessary strike."

As you are well aware, GE is one of the U.S. Government's largest contractors. GE clearly falls within the purview of the new tests you posed
for evaluating a contractor's

(1) labor relations,

(2) employment practices and policies, and

(3) support for the right to organize and strike.

Each of these three criteria will be severely challenged if General Electric pursues the approach outlined by Welch to the management
executives.

On behalf of the 14 unions which make up the Coordinated Bargaining Committee of GE unions, we are asking that the administration reiterate
these principles to GE as our negotiations begin on contracts that expire in June.

Federal contracts play a substantial role in keeping GE at the top of the world in manufacturing. The continued financial success of GE will
depend in large measure on solid and uninterrupted productivity throughout the year. An unnecessary strike could spell financial disaster for
GE and could put a dent in the economic recovery that has been the hallmark of the Clinton-Gore Administration.

We have every intention of continuing our 50-year history of cooperative and good faith collective bargaining with GE. We can only hope that
top management believes this as well, despite the comments of its Chief Executive Officer. To that end, it would benefit all parties if the
Clinton-Gore Administration would make known its intention of enforcing the spirit and the letter of the new policy initiative you announced in
Los Angeles. We believe this will go a long way toward assuring that GE bargains in good faith and a strike is averted.

For your review, I am enclosing a transcript of Welch's remarks, which were shown throughout GE via videotape. Also enclosed are the

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responses from the unions and the AFL-CIO. I look forward to your continued leadership on this issue and would be honored to work with
you and your office in seeking a resolution to this impending crisis.

Sincerely,

Edward Fire President
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Chairman, Coordinated Bargaining Committee of GE Unions